IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN. APPLICATION NO.470 OF 2004

Latif Khamisa Sad ... Applicant

versus

V.S. Bhosale & anr. ... Respondents

...

Ms. Pooja Bhojane, with Mr. Nitin H. Sejpal, for the Applicant.

Mr. D.A. Nalawade, for Respondent No.1.

Mr. K.V. Saste, A.P.P., for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

18th January 2005

P.C.:

1. Heard Counsel for the parties. Only three contentions have been raised before me to assail the correctness of the concurrent view taken by two Courts below. The first argument is that spot panchnama has not been drawn on the spot. This is essentially the question of fact and has been answered by two Courts below. It is

not possible to reappreciate the evidence to take a different view in the matter in exercise of revisional jurisdiction.

2. The second contention raised is that the vehicle in question was not owned by the Applicant - accused No. 1 and at best, the Applicant - accused No. 1 can be said to be carrier as he was driving that vehicle. For making the person liable for offence under section 135 of the Customs Act, it is not necessary that he should be owner of the vehicle. Viewed in that perspective, there is no substance in this submission.

3. The third contention raised before me is that the main accused is still absconding; and if it is so, the Applicant cannot be proceeded against for the alleged offence. Even this submission does not commend to me. Merely because main accused is absconding can be no basis to acquit the Applicant. Insofar as the Applicant is concerned, the evidence adduced by the prosecution has been accepted by two Courts below being reliable and trustworthy. The said

evidence clearly indicates complicity of the Applicant. If it is so, no fault can be found with the Courts below for having convicted the Applicant of the offence.

4. It was lastly argued that at least the sentence imposed by the Courts below be altered to one already undergone because the Applicant has already undergone period of about 2 years 3 months. The Court below has imposed minimum sentence of three years, in addition to the fine of Rs. 25,000/-. No exceptional circumstance is pressed into service as to why that minimum sentence should be reduced. Besides, I find force in the argument of the Counsel for the Respondent that no leniency be shown because the contraband item in question, i.e., gold bars concealed in cavities, were valued at Rs.1,91,00,000/-. Even if this is the first offence of the Applicant, there is no basis for reducing the period of sentence. Hence, dismissed.

(A.M.KHANWILKAR,J.)